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Comment on Recent Cases

BILLS AND NOTES: NEGOTIABILITY UNDER UNIFORM NEGOTIABLE INSTRUMENTS LAW.—The Supreme Court of California has recently decided in the case of *Utah State National Bank v. Smith*¹ that, under the Negotiable Instruments Law as enacted in Utah, a provision in a note for the acceleration of maturity at the option of the holder on the non-payment of interest did not render the note non-negotiable. The objection made to the negotiability of the note was based on section 1156² of the Compiled Laws of Utah to the effect that a negotiable instrument must be payable at a determinable future time and that a note whose time of payment depended upon the option of the payee did not comply with this requirement. In overruling this contention the court followed the general rule established by the law merchant³

¹ (Feb. 24, 1919) 57 Cal. Dec. 234.

² Corresponding to Cal. Civ. Code § 3085 enacted in 1917.

³ *Chicago Railway Equipment Co. v. Merchants' National Bank* (1890) 136 U. S. 268, 34 L. Ed. 349, 10 Sup. Ct. Rep. 999; cases cited in 35 L. R. A. (N. S.) 391 n; 8 C. J. 139.

and adopted in the states where the Negotiable Instruments Law has been enacted.⁴ It refused to consider earlier California decisions⁵ upon this point remarking: "The decisions of the courts of this state, based upon its various code provisions concerning negotiable instruments and particularly upon sections 3088 and 3093, Civil Code, since repealed and replaced by the uniform negotiable act, obviously can be of no assistance in ascertaining the law of Utah under the uniform act.

"The history of its drafting and enactment in the various states makes it clear that the purpose was to secure uniformity of legislation and decision throughout the United States, and the purpose is further manifest by a general proviso with reference to the applicability of the general law merchant to supplement the legislation, and no doubt to aid in its interpretation."

The decision is of interest in California although it interprets the law of Utah for the reason that the language quoted above may be taken as a forecast of the policy of the Supreme Court with reference to the law of negotiable instruments in the future.

The Negotiable Instruments Act does not contain the provision on uniformity of interpretation as do the other uniform acts.⁶ The Act as adopted in California also omitted the section repealing inconsistent legislation.⁷ These provisions were inserted in the Warehouse Receipts Act⁸ adopted in 1909 and in the bills now pending before the legislature; viz. the Uniform Sales Act,⁹ the Uniform Partnership Act,¹⁰ and the Uniform Bills of Lading Act.¹¹ A desire for uniformity on the part of the authors of this legislation is thus clearly shown.

It is to be hoped that the Supreme Court will follow the generally accepted liberal construction of the act¹² as enunciated by Mr. Justice Wilbur and disregard its former decisions based on

⁴ First National Bank v. Barrett (1916) 52 Mont. 359, 157 Pac. 951; Bright v. Offield (1914) 81 Wash. 442, 143 Pac. 159; Mackintosh v. Gibbs (1909) 79 N. J. L. 40, 74 Atl. 708.

⁵ National Hardware Co. v. Sherwood (1913) 165 Cal. 1, 130 Pac. 881; Meyer v. Weber (1901) 133 Cal. 681, 65 Pac. 1110; Smiley v. Watson (1913) 23 Cal. App. 409, 138 Pac. 367.

⁶ The title of the California act, however, reads "An act to repeal title 15 . . . and to add a new title 15 . . . and to make the law of Negotiable Instruments in the State of California uniform with the laws of other states."

⁷ § 197 of the Uniform Negotiable Instruments Act.

⁸ Cal. Stats. 1909, ch. 290, § 57.

⁹ Senate Bill No. 134, §§ 1801c, 1801f.

¹⁰ Senate Bill No. 132, §§ 2398, subd. 4, 2438.

¹¹ Senate Bill No. 133, §§ 2132a, 2132d.

¹² Union Trust Co. v. McGinty (1912) 212 Mass. 205, 98 N. E. 679; Richards v. Market Exchange Bank Co. (1910) 81 Ohio St. 348, 90 N. E. 1000, 26 L. R. A. (N. S.) 99; Cherokee National Bank v. Union Trust Co. (1912) 33 Okl. 342, 125 Pac. 464. Also see Commercial National Bank v. Canal-Louisiana Bank & Trust Co. (1916) 239 U. S. 520, 60 L. Ed. 417, 36 Sup. Ct. Rep. 194, in interpreting the Warehouse Receipts Act.

the provisions of the Civil Code.¹³ The character of negotiability should be extended to mortgage notes¹⁴ and bonds¹⁵ and other instruments as suggested by Mr. Harrison in an article published recently in this Review.¹⁶ This decision which marks one step towards uniformity should be the precursor of others along similar lines.

R. P.

DAMAGES: MENTAL SUFFERING: EVIDENCE OF PLAINTIFF'S POVERTY.—The case of *Smith v. The Atchison, Topeka and Santa Fe Ry. Co.*¹ suggests an ever perplexing problem in the law of damages for personal injuries. Evidence as to the number and ages of the plaintiff's children was held not admissible for the purpose of proving mental suffering. While the cases are not in harmony as to the admissibility of such evidence, the weight of authority seems to be against it. However, the statements of the courts are often so broad as seemingly to sanction such evidence, and this viewpoint, which is supported by considerable authority, seems justly to demand careful consideration.

In recoveries for mental anguish or suffering, it is a basic rule that mental anguish must be either "direct" or, when "indirect", the proximate result of defendant's act. As a general rule, mental suffering is not of itself a cause of action; it is *damnum absque injuria*.² On the other hand, if it accompanies other injuries for which action traditionally lay, and is a proximate result, it is material damage.³ The chief objection urged against the allowance of compensation for mental suffering was, once, that it was not capable of estimation in money; though that argument might equally have been urged against damages for physical pain. The law long since came to the view that mere difficulty in measuring damage to the feelings should not preclude compensation therefor in a proper case.⁴

¹³ Supra, n. 5. See criticism of previous codification in article Law Merchant and California Decisions by Professor Kidd, 2 California Law Review, 377.

¹⁴ The existence of mortgage security does not affect negotiability in other states where the act is in force; even in states where there is a similar provision to Cal. Code Civ. Proc. § 726. 8 C. J. 200 and cases there cited.

¹⁵ Negotiability of Bonds in California, 6 California Law Review, 444.

¹⁶ The Adoption of the Negotiable Instruments Law in California, 6 California Law Review 23.

¹ (Jan. 28, 1919) 57 Cal. Dec. 122.

² 5 Columbia Law Review, 182; Sutherland, Damages, (4th ed.), p. 339.

³ Sedgwick on Damages, p. 920; Zibbell v. So. Pac. Co. (1911) 160 Cal. 237, 116 Pac. 513; Wheelock v. Postal Tel. Cable Co. (1908) 197 Mass. 152, 83 N. E. 313; Chicago City R. Co. v. Anderson (1899) 182 Ill. 298, 55 N. E. 366.

⁴ Sedgwick on Damages, p. 72; Young v. Western Union Tel. Co. (1890) 107 N. C. 370, 11 S. E. 1044; Wadsworth v. Western Union Tel. Co. (1888) 86 Tenn. 695, 711, 8 S. W. 574; Ind. Ry. Co. v. Orr (1908) 41 Ind. App. 426, 84 N. E. 32; Walker v. Chanslor (1908) 153 Cal. 118, 94 Pac. 606; Elfers v. Woolley (1889) 116 N. Y. 294, 22 N. E. 548; Lyon v. Hancock (1868) 35 Cal. 372.